

## **Senate Bill No. 1846**

### **CHAPTER 135**

An act to amend Sections 6309, 6313, and 6314 of the Public Resources Code, relating to public resources.

[Approved by Governor August 21, 2006. Filed with  
Secretary of State August 21, 2006.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

SB 1846, Committee on Natural Resources and Water. Public resources: underwater salvage operation.

(1) Under existing law, the State Lands Commission administers the Shipwreck and Historic Maritime Resources Program, as defined, regulating salvage operations over and upon all tide and submerged lands of the state. Existing law requires a person conducting a salvage operation, as defined, on tide and submerged lands to obtain a permit from the commission, and authorizes the commission to designate persons, paid for by the permitholder, to observe all salvage operations. Existing law authorizes the commission to revoke the permit, after notice to the permitholder, if the commission finds that the permitholder failed to comply with the terms of the permit or other applicable provision of law.

This bill would, in addition, authorize the commission to issue a permit for the search, exploration, or recovery of nonhistoric vessels, aircraft, or submerged objects, and for the search, archaeological investigation, and recovery of historic vessels, aircraft, or other submerged historic resources, as defined, on tide and submerged lands. The bill would require the commission to issue a permit based on the commission's evaluation of the project and its probable impact on the site or objective, and the impact on the state submerged lands. The bill would authorize the commission to require the permitholder to provide a reliable communication system for the observer to communicate with the commission. The bill would authorize the executive officer of the commission, after notice to the permitholder and time to correct, to issue a stop work order if the observer determines that activities conducted on the project are not within the terms of the permit. The bill requires the executive officer to hold a hearing within 3 business days of the issuance of a written notice of the stop work order.

(2) Existing law authorizes the commission to grant a permit for salvage operations to specified entities that demonstrate the capability to carry out salvage operations. Existing law requires a person proposing to conduct a salvage operation to provide to the commission a detailed plan for the protection and preservation of the site or objects, or materials

removed from the site consistent with contemporary professional standards of archaeological data recovery.

This bill would, instead, authorize the commission to grant a permit when the proposed activity is justified by an educational, scientific, or cultural purpose, or the need to protect the integrity of the site or the resource and grant a permit to specified entities that demonstrate the capability of properly carrying out archaeological investigations. The bill would require a person proposing such activity to submit a detailed project design that provides information, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6309 of the Public Resources Code is amended to read:

6309. (a) The commission shall administer the Shipwreck and Historic Maritime Resources Program, which consists of the activities of the commission pursuant to this section and Sections 6313 and 6314.

(b) The commission has exclusive jurisdiction with respect to salvage operations over and upon all tide and submerged lands of the state. The commission may grant the privilege of conducting salvage operations upon or over those lands by the issuance of permits. The commission may adopt rules and regulations in connection with applications for those permits, and the operations to be conducted in the salvage operation, that the commission determines to be necessary to protect those lands and the uses and purposes reserved to the people of the state.

(c) The commission may issue permits for salvage on granted tide and submerged lands only after consultation with the grantee and a determination by the commission that the proposed salvage operation is not inconsistent with the purposes of the grant.

(d) A salvage permit shall be required of a person or entity to conduct any salvage operation. As used in this section and Section 6313, “salvage operation” means any activity, including search by electronic means, or exploration or excavation using tools or mechanical devices, with the objective of locating, and recovering or removing vessels, aircraft, or any other cultural object from the surface or subsurface of state submerged lands.

(e) Salvage permits shall be issued for one year, with the option to renew the permit for additional one-year periods at the discretion of the commission upon a showing that the permitholder has diligently and lawfully pursued the permitted activity and has achieved to a reasonable extent the purpose for which the permit was issued.

(f) The commission may require that a person designated by the commission and paid by the permitholder be present during each phase of a salvage operation to observe and monitor compliance with the terms of the permit. The permitholder shall, upon the request of the commission, provide or pay for a reliable communication system for the observer to

maintain contact with the office of the commission while on the salvage site.

(g) The commission may issue a permit for the search or recovery of nonhistoric vessels, aircraft, or submerged objects, and for the search, archaeological investigation, and recovery of historic vessels, aircraft, or other submerged historic resources as defined in subdivision (b) of Section 6313. The commission shall determine the appropriate type of permit to issue based on its evaluation of the salvage project and the project's probable impact on the site or objective, and the impact on the state submerged lands. The commission shall not require a permit for any recreational diving activity which does not disturb the subsurface or remove objects or materials from a submerged archaeological site or submerged historic resource as defined in Section 6313.

(h) (1) Permits may be revoked by the commission, after notice to the permitholder, at any time the commission finds that the permitholder has failed to comply with the terms of the permit or any law or regulation governing the permitted activity.

(2) A stop work order may be issued by the executive officer of the commission at the request of the onsite observer provided by subdivision (f), if the observer determines that the activities of the permitholder are not within the permitted activity. A stop work order shall be issued after the nonpermitted activity is brought to the attention of the person in charge of the onsite operation and that person fails or refuses after sufficient time and opportunity to change or correct the activity. Written notice of the stop work order shall be given to the person in charge of the onsite activity and a hearing by the executive officer or his or her designee shall be provided to the permitholder within three business days.

(3) After the hearing the commission may seek enforcement of, or the permitholder may seek relief from, the stop work order in the superior court in the county in which the activity is being conducted. The relief may include damages for failure to comply with the stop work order. The commission may deny an application for a permit when it finds that the applicant has failed to provide, for a period of 60 days, information specifically requested by the commission which is necessary to complete the application.

(i) When title to the objects, including a vessel, to be recovered is vested in the state, the commission shall provide for fair compensation to the permitholder in terms of a percentage of the reasonable cash value, or a fair share, of the objects recovered. The reasonable cash value of the objects shall be determined by appraisal by qualified experts selected by the commission. The commission shall determine the amount constituting fair compensation, taking into consideration the circumstances of each case. Title to all objects recovered is retained by the state until it is released by the commission.

(j) The commission may fix and collect reasonable fees and costs for the processing and issuance of permits under this section. The applicant may be required to post a bond to ensure the completion of the project or

payment of costs, or to deposit funds with the commission sufficient to cover costs and expenses chargeable to the applicant by law or by an agreement for reimbursement. If a bond is posted, the bond shall be held by the commission and shall be sufficient to cover all potential costs associated with the project, including preserving, restoring, and protecting the site and its associated finds.

SEC. 2. Section 6313 of the Public Resources Code is amended to read:

6313. (a) The title to all abandoned shipwrecks and all archaeological sites and historic resources on or in the tide and submerged lands of California is vested in the state. All abandoned shipwrecks and all submerged archaeological sites and submerged historic resources of the state shall be in the custody and subject to the control of the commission for the benefit of the people of the state of California. The commission may transfer title, custody, or control to other state agencies or recognized scientific or educational organizations, institutions, or individuals by appropriate legal conveyance.

(b) As used in this section, “submerged archaeological site” and “submerged historic resource,” shall be given the broadest possible meaning, to include any submerged object, structure, building, watercraft, aircraft, or vessel and any associated cargo, armament, tackle, fixture, human remains, or remnant of those objects, or a site, area, person, or place, which is historically or archaeologically significant, or significant in the prehistory or history or exploration, settlement, engineering, commerce, militarism, recreation, or culture of California and that is partially or wholly embedded in or resting on state submerged or tidal lands.

(c) Sites with archaeological or historic significance shall be determined by reference to their eligibility for inclusion in the National Register of Historic Places or the California Register of Historical Resources. Any submerged archaeological site or submerged historic resource remaining in state waters for more than 50 years shall be presumed to be archaeologically or historically significant. The commission, with the assistance of the State Office of Historic Preservation, shall identify, compile, and maintain an inventory of shipwreck sites, or sites of archaeological or historical significance and shall make the listing available to the public.

(d) Permits for salvage operations involving submerged archaeological sites or submerged historic resources may be granted by the commission when the proposed activity is justified by an educational, scientific, or cultural purpose, or the need to protect the integrity of the site or the resource. The commission may issue permits to individuals or organizations representing museums, universities, colleges, or other recognized scientific or educational institutions and individuals that demonstrate the capability to properly carry out archaeological investigations. The commission may deny an application for a permit to an applicant who the commission determines has not demonstrated the ability

to properly conduct an archaeological investigation or salvage activities. The commission may consider the applicant's past conduct with regard to salvage operations when making this determination.

(e) (1) Prior to the issuance of a permit under subdivision (d), the applicant shall provide to the commission a detailed project design that includes all of the following:

- (A) The purpose of the project.
- (B) A description of the methodology, technology, and equipment to be employed.
- (C) The project funding source.
- (D) A timetable for the completion of the project.
- (E) The composition, qualifications, and responsibilities of the project team.
- (F) A conservation and curation plan, if applicable.
- (G) A plan to document all phases of the project.
- (H) A safety plan.
- (I) An outline and timetable for preparation and submission of progress reports and a final report.
- (J) Other information that the commission deems necessary to properly evaluate the application.

(2) All activities permitted under subdivision (d) or required by this subdivision shall be accomplished under the direct supervision of a person who meets the qualifications required of a professional marine archaeologist.

(f) The commission shall forward applications for permits for archaeological investigation or excavation and recovery of historic vessels, aircraft, or other submerged historic resources in state waters, including the information required by subdivision (e), to the State Office of Historic Preservation, and may provide the applications and information to other qualified organizations and individuals, as appropriate, for technical review of the project design and recommendation concerning the preservation and protection of the site or resource.

(g) The commission shall provide for the disposition of all objects or other materials recovered, which may include provisions for display in museums, educational institutions, and other appropriate locations available to the public.

(h) The commission may contract with persons, firms, corporations, or institutions who, for the privilege of having temporary possession of recovered archaeological resources, will advance to the commission the money necessary to conduct salvage operations or to purchase from a permitholder, from his or her fair share, archaeological resources which the commission determines should remain the property of the state. A contract may be made only on the condition that the commission may, at any time, repay the money advanced, without interest or additional charges of any kind, and recover possession of the resources. During the time the resources are in the possession of the entity advancing the money, the

resources shall be available for viewing by the general public at a nominal fee or without charge.

(i) The commission may also contract with other state agencies, qualified public or private institutions, local governments, or individuals for public display of the archaeological resources recovered. The commission shall require assurances that appropriate security, qualified personnel, insurance, and facilities for preservation, restoration, and display of the resources loaned are provided under the contract.

SEC. 3. Section 6314 of the Public Resources Code is amended to read:

6314. (a) A person who removes, without authorization from the commission, or a person who destroys or damages an archaeological site or any historic resource, that is located on or in the submerged lands of, and which is the property of, the state, is guilty of a misdemeanor and is punishable by imprisonment in the county jail not to exceed six months or a fine not to exceed five thousand dollars (\$5,000), or by both.

(b) The commission, or, at its request, the Attorney General or a district attorney in whose jurisdiction the violation occurred, may seek civil damages for the damage, loss, or destruction of abandoned shipwrecks, their gear or cargo, or any archaeological site or historic resource located on or in submerged lands of the state. A vessel used to damage, destroy, or cause the loss of, any such shipwreck or archaeological site or historic resource is subject to a proceeding in rem by the state for the costs and damages resulting from that damage, destruction, or loss. Enforcement may include, where appropriate, a restraining order or injunctive relief to restrain and enjoin violations or threatened violations of Section 6309, Section 6313, or this section and for the return of items taken in violation of these sections.

(c) An artifact, object, or material which has been removed from a state submerged archaeological site or submerged historic resource, as specified in subdivision (a), and which is found in any watercraft occupied by persons who do not hold a permit as required by Section 6309 or Section 6313 or other reasonable evidence of legal possession is prima facie evidence of violation of that section and the artifact, object, or material may be confiscated by any state, federal, or local law enforcement officer. Artifacts, objects, or materials confiscated under this section shall be returned to the person claiming ownership, upon proof of ownership or legal right to possession, within 30 days of their confiscation, unless a prosecuting attorney determines that they are required as evidence in the prosecution of a criminal violation.

(d) In a case in which a district attorney, at the request of the commission, or with its concurrence, enforces subdivision (a), the commission shall, notwithstanding Section 1463 of the Penal Code, be entitled to an equal division of the fine imposed.

(e) All state and local law enforcement agencies and officers are directed to assist in enforcing this section, and are requested to work with

and seek the cooperation of federal law enforcement agencies, including deputizing federal officers when appropriate.

O